REMARKS

This response is intended as a full and complete response to the final Office Action mailed September 6, 2007. In the Office Action, the Examiner notes that claims 1-19 and 23-53 are pending and rejected. The Applicants herein amend claims 1, 6, 7, 33 and 50. The Applicants submit that support for the amendments may be found in the Applicants' specification on at least page 10, lines 1-3 and page 13, lines 5-14.

In view of the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Thus, Applicants believe that all of these claims are now in allowable form.

Rejection under 35 U.S.C. §103 of Claims 1-5 and 30-32

The Examiner has rejected claims 1-5 and 30-32 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,600,573 to Hendricks et al. (Hendricks) in view of U.S. Patent 5,956,716 to Kenner (Kenner) and U.S. Patent No. 5,855,020 to Kirsch (Kirsch). Applicants respectfully traverse the Examiner's rejection.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Hendricks Kenner and Kirsch, alone or in combination, fail to teach or suggest Applicants' invention as a whole.

Applicants' independent claim 1 recites:

> 1. A system for finding and retrieving programming from remote sources in a distributed digital communication network, comprising:
> an aggregator, wherein said aggregator implements a screening process for limiting a number of programs retrieved to those programs with a viewing audience above a predetermined threshold, comprising:
> a request and results processing server, wherein said request and results processing server comprises:
> a content search suggestion engine, wherein said content search suggestion engine suggests content based on a user's past search criteria or previously downloaded content;
> a search engine server coupled to the request and results processing server, wherein the search engine server, comprises:
> a search engine processor;
> a remote content crawler coupled to the search engine processor, wherein the remote content crawler periodically crawls the communications network

automatically and retrieves programming information for programs not indexed on the aggregator;

a search results processor coupled to the search engine processor; and

a replicated content database; and

a content acquisition server coupled to the request and results processing server, wherein the request and results processing server receives a request for a program, the search engine server searches the remote sources for the program, and the content acquisition server receives the program from one of the remote sources. (Emphasis added).

Hendricks discloses an operations center including a system controller, a holder, a computer assisted packaging system that receives video on demand requests and determines whether the program is available for distribution and whether a link is available, and a receiver connected to the holder for receiving signals from a satellite or another remote source.

The Applicants respectfully submit that Hendricks, Kenner and Kirsch, alone or in any permissible combination, fail to teach or to suggest at least the limitations of "an aggregator, wherein said aggregator implements a screening process for limiting a number of programs retrieved to those programs with a viewing audience above a predetermined threshold, comprising: a request and results processing server, wherein said request and results processing server comprises: a content search suggestion engine, wherein said content search suggestion engine suggests content based on a user's past search criteria or previously downloaded content."

Hendricks teaches using market research information to aid in packaging programs. (See Hendricks, col. 10, ll. 48-52; col. 17, ll. 18-27). However, Hendricks fails to teach or suggest that the market research information is used to limit a number of programs retrieved or implement a screening process for limiting a number of programs retrieved to those programs with a viewing audience above a predetermined threshold. Kenner and Kirsch fail to teach or suggest this limitation also.

Furthermore, Hendricks, Kenner and Kirsch fail to teach or suggest the use of a content search suggestion engine. The Examiner concedes this in the office action. (See Office Action, p. 13, ll. 1-3). However, the Applicants note that the Examiner uses U.S. Patent Publication number 2002/0038308, hereinafter referred to as "Cappi" to teach the use of a content search suggestion engine.

The Applicants respectfully submit that Cappi only teaches suggesting similar search terms based on the creation of a global data dictionary. (See Cappi, Abstract, para. [0034]). For example, if a user searches for "income" the search would also look for "earnings" based on recorded relationships in the dictionary. (See *Id.* at para. [0043]).

In contrast, the Applicants' invention uses a content search suggestion engine that suggests content based on a user's past search criteria or previously downloaded content. In other words, unlike Cappi, the content search suggestion engine taught by the Applicants' invention may be tailored for each user. Cappi fails to teach or suggest a similar content search suggestion engine.

Thus, Hendricks, Kenner and Kirsch, alone or in combination, fail to disclose the invention as a whole. As such, Applicants submit that independent claim 1 is not obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder. Furthermore, claims 2-5 and 30-32 depend directly or indirectly from independent claim 1 and recite additional limitations thereof. As such, and for at least the same reasons as discussed above, Applicants submit that these dependent claims are also not obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 6-10, 14-19, and 23-29

The Examiner has rejected claims 6-10, 14-19, and 23-29 under 35 U.S.C. §103(a) as being unpatentable over Hendricks, Kenner, and Kirsch as applied to claim 1 above, and further in view of Cappi. Applicants respectfully traverse the Examiner's rejection and particularly the Examiner's characterization of Cappi.

Claims 6-10, 14-19, and 23-29 depend, directly or indirectly, from independent claim 1 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Hendricks, Kenner and Kirsch references fail to teach or suggest Applicants' invention as a whole, as recited in claim 1. Accordingly, any attempted combination of the Hendricks, Kenner and Kirsch references with the Cappi reference, in a rejection against the dependent claims, would still result in a gap in the combined

teachings in regards to the independent claim. As such, Applicants submit that dependent claims 6-10, 14-29, and 23-29 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 11-13

The Examiner has rejected claims 11-13 under 35 U.S.C. §103(a) as being unpatentable over Hendricks, Kenner, Kirsch and Cappi as applied to claim 10 above, and further in view of Whitman et al. U.S. Patent 6,772,150 (Whitman) and Grooters U.S. Patent 6,839,705 (Grooters). Applicants respectfully traverse the rejection.

Claims 11-13 depend directly or indirectly from independent claim 1 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Hendricks, Kenner, Kirsch and Cappi references fail to teach or suggest Applicants' invention as a whole, as recited in claim 1. Whitman and Grooters fail to bridge the substantial gap left by Hendricks, Kenner, Kirsch and Cappi. Accordingly, any attempted combination of the Hendricks, Kenner, Kirsch and Cappi references with the Whitman and Grooters references, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim because they all lack the feature of periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator. As such, Applicants submit that dependent claims 11-13 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 33, 39-44, 46, 47, 50, 51, and 53

The Examiner has rejected claims 33, 39-44, 46, 47, 50, 51, and 53 under 35 U.S.C. §103(a) as being unpatentable over Kenner in view of Kirsch. Applicants respectfully traverse the rejection.

Applicants' independent claims 33 and 50 recite:

33. A method using a video and multimedia aggregator for finding and retrieving program content from remote sources in a distributed digital communication network, comprising:

receiving a program content search request from a user terminal in the network;

suggesting additional content via a content search suggestion engine based on a user's past search criteria or previously downloaded content;

searching a local content database based on the program content search request;

searching one or more remote content databases based on the program content search request;

identifying one or more programs based on the searches;

acquiring one or more of the one or more identified programs from one or more of the local content database and the remote databases if said one or more identified programs has a viewing audience above a predetermined threshold;

periodically crawling the communications network automatically; and

retrieving programming information for programs not indexed on the aggregator. (Emphasis added).

50. A video and multimedia aggregator for use in a distributed digital communication network, comprising:

means for requesting a search for program content;

means for suggesting content based on a user's past search criteria or previously downloaded content;

means for processing the search request;

means for searching local and remote sources for the program content;

means for acquiring metadata related to the program content;

means for displaying the acquired metadata;

means for receiving a program content download request;

means for acquiring the program content in the download request if said program content has a viewing audience above a predetermined threshold;

means for displaying the acquired program content at a user terminal;

means for billing a user of the user terminal; and

means for periodically crawling the communications network automatically, thereby retrieving programming information for programs not indexed on the aggregator. (Emphasis added).

The Applicants respectfully submit that Kenner and Kirsch, alone or in any permissible combination, fail to teach or to suggest at least the limitations of "suggesting additional content via a content search suggestion engine based on a user's past search criteria or previously downloaded content and acquiring one or more of the one or more identified programs from one or more of the local content database and the remote databases if said one or more identified programs has a viewing

audience above a predetermined threshold."

Hendricks teaches using market research information to aid in packaging programs. (See Hendricks, col. 10, ll. 48-52; col. 17, ll. 18-27). However, Hendricks fails to teach or suggest that the market research information limits a number of programs retrieved or implementing a screening process for limiting a number of programs retrieved to those programs with a viewing audience above a predetermined threshold. Kenner and Kirsch fail to teach or suggest this limitation also.

Furthermore, Hendricks, Kenner and Kirsch fail to teach or suggest the use of a content search suggestion engine. The Examiner concedes this in the office action. (See Office Action, p. 13, ll. 1-3). However, the Applicants note that the Examiner uses Cappi to teach the use of a content search suggestion engine.

The Applicants respectfully submit that Cappi only teaches suggesting similar search terms based on the creation of a global data dictionary. (See Cappi, Abstract, para. [0034]). For example, if a user searches for "income" the search would also look for "earnings" based on recorded relationships in the dictionary. (See *Id.* at para. [0043]).

In contrast, the Applicants' invention uses a content search suggestion engine that suggests content based on a user's past search criteria or previously downloaded content. In other words, unlike Cappi, the content search suggestion engine taught by the Applicants' invention may be tailored for each user. Cappi fails to teach or suggest a similar content search suggestion engine.

As such, Applicants submit that independent claims 33 and 50 satisfy the requirements of 35 U.S.C. §103 and are patentable Kenner in view of Kirsch. Furthermore, claims 39-44, 46, 47, 51, and 53 depend directly or indirectly from independent claims 33 and 50 and recite additional limitations thereof. Accordingly, for at least the same reasons as discussed above, Applicants submit that these dependent claim fully satisfy the requirements of 35 U.S.C. §103 and are patentable over Kenner in view of Kirsch. Therefore, the rejection should be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 34-36

The Examiner has rejected claims 34-36 under 35 U.S.C. §103(a) as being unpatentable over Kenner and Kirsch as applied to claim 33 above, and further in view of Whitman. Applicants respectfully traverse the rejection.

Claims 34-36 depend directly or indirectly from independent claim 33 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Kenner and Kirsch references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Whitman fails to bridge the substantial gap left by Kenner and Kirsch. Accordingly, any attempted combination of the Kenner and Kirsch references with the Whitman reference, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim because Whitman lacks the feature of periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator. As such, Applicants submit that dependent claims 34-36 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 37 and 38

The Examiner has rejected claims 37 and 38 under 35 U.S.C. §103(a) as being unpatentable over Kenner, Kirsch and Whitman as applied to claim 35 above, and further in view of Nelson et al. U.S. Patent 6,243,713 (Nelson). Applicants respectfully traverse the rejection.

Claims 37 and 38 depend indirectly from independent claim 33 and recite additional limitations thereof. For at least the reasons discussed above, the Kenner and Kirsch references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Furthermore, the Kenner, Kirsch and Whitman references fail to teach or suggest Applicants' invention as recited in dependent claim 35. Nelson fails to bridge the substantial gap left by Kenner, Kirsch and Whitman. Accordingly, any attempted combination of the Kenner, Kirsch and Whitman references with Nelson, in a rejection against the dependent claims, would still result in a gap in the combined

teachings in regards to the independent claim. As such, Applicants submit that dependent claims 37 and 38 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claim 45 and 48

The Examiner has rejected claim 45 and 48 under 35 U.S.C. §103(a) as being unpatentable over Kenner and Kirsch as applied to claims 44 and 46 above, and further in view Grooters. Applicants respectfully traverse the rejection.

Claims 45 and 48 depend, directly or indirectly, from independent claim 33 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Kenner and Kirsch references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Grooters fails to bridge the substantial gap left by Kenner and Kirsch.

Accordingly, any attempted combination of the Kenner and Kirsch references with Grooters, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claims 45 and 48 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 49 and 52

The Examiner has rejected claims 49 and 52 under 35 U.S.C. §103(a) as being unpatentable over Kenner and Kirsch as applied to claim 46 above, and further in view of Nelson. Applicants respectfully traverse the rejection.

As stated above, Kenner and Kirsch do not teach or suggest periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator.

Nelson discloses multimedia document retrieval by retrieving multimedia queries of different data types. Nelson fails to bridge the substantial gap left by Kenner and Kirsch. As such, Applicants submit that dependent claims 49 and 52 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that the rejection of such claims under 35 U.S.C. §103(a) be withdrawn.

Regarding Official Notice:

The Applicants reiterate the fact that Official Notice was not properly established. Under MPEP 2144.03, the board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies. In re Lee, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002). Moreover, there must be some form of evidence in the record to support an assertion of common knowledge. See *Id.* The Examiner's self proclaimed "notoriousness" of various technologies is clearly "conclusory" without supporting evidence and, therefore fails to properly establish Official Notice.

Even if properly established, the Applicants believe that each Official Notice was adequately traversed, as required under MPEP 2144.03. The Applicants' specifically traverse the Official Notice taken with regard to use of an authorization code and password and search request initiation times. With regard to authorization code and passwords, the Applicants respectfully submit that searching is generally not protected by authorization code and passwords. However, in one embodiment of the Applicants' invention, searching may be supplemented with suggested content associated with a user's previous search criteria or previously downloaded content. This information may be considered private and an authorization code and password may be used in conjunction with one embodiment of the Applicants' invention to protect the privacy of information. Therefore, the Applicants respectfully submit that contrary to the Examiner's assertion, it is not notoriously well known to use an authorization code and password in combination with the limitations of the independent claims and all intervening claims.

With regard to search request initiation times, the Applicants respectfully submit that searching is generally not time dependent. Rather, one skilled in the art will recognize that a user generally desires an instant result when using searching programs. However, the Applicants' invention discloses in one embodiment acquiring programming content. As a result, a user may desire to initiate a search request during a time period where a user wishes to watch a programming content. Therefore, the Applicants respectfully submit that contrary to the Examiner's assertion, it is not notoriously well known to use search request initiation times in combination with the limitations of the independent claims and all intervening claims.

CONCLUSION

Thus, Applicants submit that all of the claims presently in the application are allowable. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 11/6/07

Eamon J. Wall
Registration No. 39,414
Attorney for Applicant

PATTERSON & SHERIDAN, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
Telephone: 732-530-9404
Facsimile: 732-530-9808

608732-1